



Senator Feinstein Delivers Speech on Senate Floor
Highlighting the Recent History of U.S. Attorney Firings
February 15, 2007

Washington, DC –U.S. Senator Dianne Feinstein (D-Calif.) today delivered a speech on the Senate floor highlighting the recent history of U.S. Attorney firings and calling for passage of legislation that would require Senate confirmation of all U.S. Attorneys. This legislation was approved in Senate Judiciary Committee last week.

Under a provision inserted without notice into the USA Patriot Act reauthorization last year, the law was changed so that if a vacancy arises, the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process.

The legislation approved by the Judiciary Committee would restore the process in place before 2006. It would allow the Attorney General to appoint interim U.S. Attorney for 120 days. If after that time the President has not sent up a nominee to the Senate and had that nominee confirmed, then the authority to appoint an interim U.S. Attorney would fall to the district court. This was the law from 1986 to 2006. It was proposed by Reagan Administration and authored by Senator Strom Thurmond.

The following is Senator Feinstein's statement as delivered on the floor:

Mr. President, I thank the Senator from New York for holding the hearing in his subcommittee, for his leadership, for understanding what is at stake, and for being willing to be out in front on doing something about it.

What I want to do for the American public is lay out the history of this particular issue and place it in context.

Unbeknownst to any of us, in March 2006, in the PATRIOT Act reauthorization, a provision was included that allows the Attorney General to appoint an interim U.S. attorney for an indefinite period of time. You might ask, what is wrong with that? What is wrong is that it avoids Senate confirmation. Prior to this change, the law stated that the Attorney General could appoint interim U.S. attorneys but only for 120 days. After that time, the authority to appoint an interim U.S. attorney would fall to the district court. Why? Because that provided an incentive to the administration to present a U.S. attorney nominee to the Senate for hearing, for questions, for review, and for a vote on confirmation.

This structure created in 2006 was relatively new. It was enacted during the Reagan administration in a broader bill by Strom Thurmond that was described as a technical corrections bill on criminal procedures. Before that, from 1898 until the Thurmond bill was enacted, district courts held the sole authority to appoint interim U.S. attorneys. That existed for almost 100 years. It was critical then, as it is now, that all U.S. attorneys receive Senate confirmation. By having the district courts make that interim appointment, it assured that the confirmation would take place.

No one expected the rash of firings from the Department of Justice. I first learned about the Department's actions early in January. At that time I learned that main Justice in Washington had placed calls to at least seven, possibly more, U.S. attorneys and asked them to resign by a date specific in January. I was also told that the intention was to bring in outside lawyers from main Justice or from elsewhere to take over these posts and to serve without confirmation for the remainder of the Bush presidency.

The Department of Justice has now acknowledged in public and at a hearing that such calls were made to "less than 10" U.S. attorneys asking them to step aside. We also know that prior to this action, there were already 13 U.S. attorney vacancies pending, with only two nominations presented by the administration to the Judiciary Committee. This means that if you add the 7 to 10 U.S. attorneys who were asked to resign to the current 11 vacancies without nominees, there could be between 18 and 21 U.S. attorney positions throughout the country that the Attorney General could fill without securing Senate confirmation. That is over 20 percent of U.S. attorneys nationally that could be filled for the remaining 2 years of the Bush presidency without going through Senate confirmation.

This new provision slipped into the PATRIOT Act would also allow the next President to put in place all 93 U.S. attorneys and let them serve the entire 4-year term without the benefit of confirmation. This change was a mistake. I suspect the amendment to the PATRIOT Act came from the Justice Department, was quietly put in the bill, and none of us at the time were the wiser. And then suddenly, at a certain point, the Justice Department said: OK, let's begin to remove some of these people and give some of our own bright young people an opportunity to step up and become a U.S. attorney. This is wrong, and the Justice Department has backed away from it.

Let me talk about a few of the U.S. attorneys involved. According to press reports, at least three were given glowing reviews from their performance audits in the recent past. According to the Las Vegas Review-Journal, Daniel Bogden, the U.S. Attorney for Nevada, said Wednesday that he was stunned to hear the Department of Justice requested that he step down from his post because of performance reasons. He went on to say: "To this date, no one from the department has previously identified any issues with my performance or the performance of my office."

A similar story has surfaced about Washington U.S. Attorney John McKay. The Seattle Times reported last week: "Seven months before he was forced to resign as U.S. attorney for the western district of Washington, John McKay received a glowing performance review from Justice Department evaluators."

The article went on to quote the report which stated: "McKay is an effective, well-regarded and capable leader of the [U.S. attorney's office]" ...according to the team of 27 Justice Department officials.

Yet on December 7th, Michael Battle, director of the Justice Department's executive office for U.S. attorneys, called McKay and asked him to step down. "I was told to resign by the end of January," McKay confirmed... "I asked what the reason was, and they told me there was none."

Then, of course, there is former-Arkansas U.S. Attorney Bud Cummins. In a story that ran last month, Mr. Cummins stated that the Director of the Executive Office of U.S. Attorneys, Michael Battle, made it clear that although he was being asked to leave, "it was not about me but about their desire to give someone else the opportunity to have the appointment."

Mr. Cummins said he specifically asked if his job performance was a problem when he got the call: "[Mr. Battle] assured me it was exactly to the contrary."

These are three cases that have been documented where U.S. attorneys did not have any performance-related concerns as alleged by the Department. In addition, I have heard similar reports about other U.S. attorneys. I want to speak in specific about one. That is the U.S. Attorney from San Diego, CA.

Today is U.S. Attorney Carol Lam's last day in office. I want to commend her. I thank her for the work she has done in that office. She was sworn in as U.S. attorney in September of 2002 and was appointed by the President in November 2002. Prior to serving as U.S. attorney, she was a judge of the Superior Court of San Diego, and she served as an assistant U.S. attorney in the southern district of California for 11 years. So she was no newcomer. She has been successful in bringing many of the country's most important corruption cases. I want to go through a few of them.

In March of 2004, Steven Mark Lash, the former chief financial officer of FPA Medical Management, was sentenced for his role in defrauding shareholders and lenders of FPA. The collapse of the company left more than 1,600 doctors being owed more than \$60 million and patients reported being unable to obtain medical care because FPA had ceased paying providers. Thank you, Carol Lam.

In January 2005, Mark Anthony Kolowich, owner of World Express Rx, pled guilty to conspiracy to selling counterfeit pharmaceuticals, conspiracy to commit mail fraud and smuggle pharmaceuticals, and conspiracy to launder money. Mr. Kolowich had run an Internet pharmacy Web site where customers could order prescription drugs without a valid prescription. The judge called him the kingpin and architect of an illicit pharmaceutical ring that recruited many others to smuggle drugs across the United States-Mexico border at San Ysidro. Ms. Lam also announced that charges had been filed against

five other individuals in a related case involving MyRxForLess.com. Thank you, Carol Lam.

In July 2005, Ms. Lam brought a case against San Diego councilman Ralph Inzunza and Las Vegas lobbyist Lance Malone. They were convicted on multiple counts of extortion, wire fraud conspiracy, and wire fraud. They were accused of trading money for efforts to repeal a law.

In November 2005, Ms. Lam secured a guilty plea from former Representative Randy "Duke" Cunningham for taking more than \$2 million in bribes in a criminal conspiracy case involving at least three defense contractors, after he accepted cash and gifts and then tried to influence the Defense Department on behalf of donors. He also pled guilty to a separate tax evasion violation for failing to disclose income in 2004. Thank you, Carol Lam.

In addition, earlier this week, Carol Lam announced two more indictments of Kyl "Dusty" Foggo, former top officer at the CIA, and Brent Wilkes, a defense contractor accused of bribing Duke Cunningham and the prime benefactor of the secret CIA contracts. Thank you, Carol Lam.

This woman was called and told to resign by a date specific, after she has done all of this good work. Ms. Lam and the San Diego U.S. Attorney's office have also pursued and successfully prosecuted other important cases, including:

In September 2005, the president of the San Diego chapter of Hell's Angels pled guilty to conspiracy to commit racketeering. Guy Russell Castiglione admitted that he conspired to kill members of a rival motorcycle gang, the Mongols, and to sell methamphetamine. Thank you, Carol Lam.

Then in December 2005, Daymond Buchanan, member of Hells Angels, was sentenced to 92 months in Federal prison for participating in a pattern of racketeering. He admitted in his guilty plea that he and other Hell's Angels also inflicted serious bodily injury upon one victim and that another Hell's Angel brandished a firearm during the offense.

At that time, Ms. Lam announced, "With the president, sergeant at arms, secretary, treasurer, and six other members of the Hell's Angels convicted of racketeering charges and facing long prison sentences, the San Diego chapter of the Hell's Angels has been effectively shut down for the foreseeable future." Thank you, Carol Lam.

And what does she get? Fired without cause.

In September, 2006, Jose Ernesto Beltran-Quinonez, a Mexican national, pleaded guilty to making false statements about weapons of mass destruction. Mr. Quinonez was sentenced to 3 years in Federal prison for making up a story about Chinese terrorists sneaking into the United States with a nuclear warhead. That hoax prompted a massive

investigation, Federal warnings, discussions at one of President Bush's security briefings, and a nationwide hunt for the group of Chinese supposedly plotting the attack. Thank you, Carol Lam.

In December 2006, Mel Kay, of Golden State Fence Company, and Michael McLaughlin, pleaded guilty to felony charges of hiring illegal immigrants and agreed to pay fines of \$200,000 and \$100,000, respectively. The company, which built more than a mile of the 15-foot-high fence near the Otay Mesa border crossing in San Diego, agreed separately to pay \$5 million on a misdemeanor count, one of the largest fines ever imposed on a company for an immigration violation. Thank you, Carol Lam.

These are just some of the important cases Carol Lam has pursued during her tenure. She does not deserve this kind of treatment.

In addition, during her previous time in the office, Ms. Lam prosecuted and convicted several high-ranking members of La Cosa Nostra, a Chicago-based organized crime family. She also secured a guilty plea and settlement of \$110 million against National Health Laboratories, Inc., in a Medicare fraud case.

Ms. Lam has had a distinguished career and she served the Southern District of San Diego well, and everyone in that district knows that. I regret that main Justice does not. I am quite disappointed that main Justice chose to remove her, especially given the ongoing work in which the office is involved.

Now, like Senator Schumer, I was present yesterday when the Justice Department briefed us and several other Senators as to why they asked these U.S. attorneys to leave. With the record I just pointed out, nothing that was said yesterday justifies asking this U.S. attorney to leave without cause -- nothing. That is why this is an issue. I believe their intent was to bring in people from the outside to give some of their bright young people an opportunity. This might not be wrong, if they weren't also attempting to avoid confirmation. Without confirmation, the Department of Justice could bring in political operatives or anybody else. That is wrong.

If I had not been given this information, we never would have known about these events because the likelihood is that these U.S. attorneys would have just quietly resigned and retired to another job or retired into society somewhere else. This is not the way we should function. That is why this is a major issue. That is why the Majority Leader of the Senate wishes to bring this bill to the floor -- to put it back to where it was prior to that provision being put into the Patriot Act without our knowledge and without debate. I hope the U.S. attorney bill will come to the floor of the Senate, and I hope we can change it back. I hope we can go out and say to the American people that this will never happen again and every U.S. attorney will have confirmation before the Senate of the United States.

I thank the Chair, and I yield the floor.

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